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IN THE

Supreme Court of the United States

October Term, 1963

No. 23

R. A. REYNOLDS, etc., et al., *Appellants*,

vs.

M. O. SIMS, et al.

No. 27

DAVID J. VANN AND ROBERT S. VANCE, *Appellants*,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.

No. 41

JOHN W. McCONNELL, JR., et al., *Appellants*,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

BRIEF FOR APPELLEES R. E. FARR, ET AL.

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CASES CITED

Baker v. *Carr*, 369 U. S. 186 (1962)

New State Ice Co. v. *Liebmann*, 285 U. S. 262 (1932)

Sims v. *Frink*, 208 F. Supp. 431 (M.D. Ala. 1962)

STATUTES CITED

Constitution of Alabama 1901, Code of Alabama 1940:

Artiele III, § 50

Article IX, § 198

Article IX, §-199

Article IX, § 200

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STATEMENT OF THE CASE

We make this limited addition to the statements of the case by appellants. Appellee R. E. Farr is a resident and citizen of Alabama and of the United States, and is District Director of the United Steelworkers of America, AFL-CIO, an unincorporated association. Appellees Marshall Meadows, Jack Hopping, Jack Ryan and Max W. Morgan

are residents of that State, citizens of the United States, and officials of Local Unions affiliated with that organization, in Jefferson, Etowah and Mobile Counties. (R. 44) These appellees were the original intervenors as plaintiffs in this proceeding. Their intervention was allowed November 16, 1961. (R. 47).

QUESTION PRESENTED

The only possibly substantial question presented is:

May a Three Judge District Court order partial reapportionment of a State Legislature so as to "loosen the strangle hold" and, retaining jurisdiction, reasonably await possible action by the State Legislature before proceeding to final, complete relief?

SUMMARY OF ARGUMENT

Under the requirements of § 50, § 198, § 199 and § 200, of the Constitution of Alabama neither the membership of the House nor of the Senate can be based strictly and entirely upon population.[1] § 284 of that Constitution states that "representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." But conflicting requirements in § 50, § 197, and § 200 make absolute equality of representation impossible. The Court below was forced to deal at the outset with those paradoxical requirements in the State Constitution.

Accordingly, in preliminary fashion, partial reapportionment of the Alabama Senate as provided in the "Crawford-Webb Act," and partial reapportionment of the Alabama House of Representatives as provided in the "67-

[1] R. 13.

Senator Amendment," were ordered into effect. (R. 155) But, in doing so, the Court was careful to state:

> "It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case." (R. 155-6) 208 F. Supp. 431, 442

That what the Court below did is supported by *Baker* v. *Carr*, 369 U. S. 186, is hardly subject to argument.

Our comment, therefore, relates largely to the cross appeals which complain that more should have been ordered. In proceeding no further than it did, the Court, we feel, likewise was correct. An historic first step is not erroneous merely because it is not immediately the full leap.

The District Court now has made a start. It has discharged a heavy, trying, burden that few, if any, judicial bodies essayed before. An ancient legislative strangle hold has been loosened by its decree. There have at least been resultant stirrings in the Legislature of Alabama—the body which ultimately will have the final say.[2]

In such a context it would be harsh indeed to hold

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[2] "Reapportionment fires burn. Legislative battles ahead." The Birmingham News, July 21, 1963

this estimable Three Judge Court in error. That Court has given unquestionable evidence of its willingness to act —and to act further if need be. Having done so, it needs the imprimatur of the Supreme Court's approval and affirmance.

No fixed mandate of the United States Constitution requires each State to select its legislators by precisely identical mathematical formulas. Subject to the overriding requirements of the Fourteenth Amendment, the particular form of, or basis for, election of State legislators in some respects is left to the States. The actual steps required for constitutional resolution of the ambiguities and conflicts in Alabama's organic law have most likely—and possibly exclusive—application only in Alabama.

In another context, Mr. Justice Brandeis noted that States should be free to "try novel, social and economic experiments."[3]

So, here, in the difficult field of representation within the legislative bodies of the States, limited variety of results is not entirely undesirable or necessarily incompatible with the Fourteenth Amendment. The indigenous Federal courts must be relied upon to keep matters constitutionally in hand. Such keeping has materialized in Alabama.

ARGUMENT

PROPOSITION I. THE DISTRICT COURT EXERCISED JUDICIAL DISCRETION AND IN THE ABSENCE OF A CLEAR ABUSE OF DISCRETION ITS DECREE SHOULD BE UPHELD.

We do not disagree with the contention that further reapportionment of Alabama's Legislature is required. We

[3] New State Ice Co. v. Liebmann, 285 U. S. 262, 311, (1932) (dissenting opinion).

do say that the Court below did not err in going no further than it did—at the time it acted.

It is axiomatic that courts exercise a wide discretion in deciding declaratory judgment actions, in passing upon acts of of legislatures and in fashioning injunctive relief. There has been no abuse of discretion here, particularly in light of the delicately complex nature of the problems raised.

PROPOSITION II. THE DISTRICT COURT MAY UTILIZE INFORMED RESTRAINT IN ITS CHOICE OF MEANS TO BE EMPLOYED IN ACHIEVING FAIR APPORTIONMENT OF LEGISLATIVE REPRESENTATIONS OF A STATE.

The District Court has found at least initial help in the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker* v. *Carr, supra:*

> "One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself." At p. 260.

The District Court has undertaken to do precisely that—to release the strangle hold. However, nowhere did the District Court suggest that more drastic reapportionment would not be undertaken should adamant inaction of the Legislature so require.

While the relief granted by the District Court was not the full measure sought, nonetheless it must be remembered that the State-wide election which followed the District Court's decree was among the first Court-ordered elec-

tions ever held in this country. And in order to make its decree effective, the Court extended its reach to the Secretary of State and the Attorney General of Alabama, to the State Executive Heads of the major political parties, and to the Judge of Probate of every county in Alabama. (R. 177)

The various alleged omissions from the decree of the District Court as argued by the cross-appellants, cannot be equated to reversible error. None of those alleged omissions have been in fact overlooked by the District Court. The District Court has made clear its willingness and determination to supervise the constitutional apportionment of legislative representatives according to population. Had the District Court refused to deal with the problems posed by the malapportionment of the Legislature, the matter would stand differently. But the people of Alabama are not, as the cross-appellants suggest, adrift upon the same turbulent seas which have existed since the Constitutional Convention in 1901.

The path leading to equality at the ballot box has been cleared.

We ask that this Supreme Court vindicate the pioneering decree of the District Court.

The several appeals and cross-appeals should be dismissed and the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jerome A. Cooper, one of the attorneys for Appellees R. E. Farr, et al., as a member of the Bar of the Supreme Court of the United States, hereby certify that on the .... day of September, 1963, I served copies of the foregoing Brief on the several appellants by mailing copies in duly addressed envelopes, with postage prepaid, to their respective attorneys of record as follows:

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